

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

STATE FARM FIRE & CASUALTY COMPANY  
Plaintiff

V.

NO. 2:95CV174-B-A

ROBERT CASEY EVANS  
Defendant

HAROLD WEBB, MICHAEL WEBB, and  
ANGEL WEBB THOMPSON  
Movants

**MEMORANDUM OPINION**

This cause comes before the court upon the motions to intervene and to set aside judgment filed by Harold Webb, Michael Webb, and Angel Webb Thompson (hereinafter "movants"). The court has duly considered the parties' memoranda and exhibits and is ready to rule.

**FACTS**

The defendant shot and killed Timothy Keith Webb on April 16, 1994. On May 26, 1995, the defendant pled guilty to manslaughter and is currently serving a twenty year sentence in the Mississippi State Penitentiary. The movants filed suit against Evans in the Circuit Court of DeSoto County, Mississippi, on April 17, 1995. On August 29, 1995, the movants filed a declaratory judgment action against Evans, State Farm, and Florine Merrill (grandmother of Evans and owner of the State Farm policy at issue) in the Circuit Court of DeSoto County to determine, in part, whether Merrill's

State Farm policy provided coverage for the actions of Evans. That action is currently set for a bench trial on April 22, 1996. On December 5, 1995, more than three months after the state court declaratory judgment action was filed, State Farm filed this declaratory judgment action against only Evans. The issue presented in this action is the same as one of the issues presented in the pending state court action--whether the State Farm policy at issue provides coverage for the actions of Evans. State Farm failed to serve or otherwise notify the movants of this action, and further failed to notify this court of the pending state court declaratory judgment action. Evans, incarcerated in the penitentiary for twenty years, did not respond to the complaint filed by State Farm, and on March 11, 1996, this court granted a default judgment in favor of State Farm on the coverage issue. State Farm is now attempting to use the default judgment granted in this action as res judicata in the state court action. The movants, upon learning of the default judgment entered in this action, filed motions seeking to intervene and to set aside the judgment.

## **LAW**

### **A. Motion to Intervene**

Rule 24(b) of the Federal Rules of Civil Procedure provides: "Upon timely application anyone may be permitted to intervene in an action...when an applicant's claim or defense and the main action

have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Intervention under Rule 24(b) is left to the sound discretion of the district court. Hopwood v. State of Tex., 21 F.3d 603, 606 (5th Cir. 1994). In considering a request for permissive intervention, the court may consider other factors, such as whether the intervenors are adequately represented by other parties and whether the intervenors are likely to contribute to the development of the underlying factual issues. League of United Latin Am. Citizens v. Clements, 884 F.2d 185, 189 (5th Cir. 1989).

In the present action, the court finds that the movants have met all of the criteria for permissive intervention, and that their motion to intervene should be granted. The movants filed their motion within days after having first learned of this action. While the plaintiff argues that intervention should not be granted after a final judgment has been entered, the case law is to the contrary and the Fifth Circuit has allowed post-judgment intervention on a number of occasions. See Ceres Gulf v. Cooper, 957 F.2d 1199, 1203 (5th Cir. 1992).

The issue of coverage under the State Farm policy is common to both the declaratory judgment action and the applicants' claim.<sup>1</sup>

---

<sup>1</sup> By attempting to plead the default judgment as res judicata in the state court action, the plaintiff has effectively admitted the existence of a common question of law or fact.

Ordinarily, the insured (or potential insured) will vigorously oppose the insurance company's complaint for declaratory relief. However, this case presents a unique situation wherein the defendant is incarcerated and judgment-proof; thus he has shown no interest in defending the declaratory judgment action. Therefore, not only are the intervenors not adequately represented by other parties, but their absence inhibits the full development of the factual issues. Furthermore, allowing the movants to intervene will cause no delay or undue prejudice to the rights of the original parties. The plaintiff will be able to fully litigate the coverage issue in the bench trial currently set for April 22, 1996, in the Circuit Court of DeSoto County. For these reasons, the court finds intervention to be appropriate.

#### **B. Motion to Set Aside Judgment**

A federal court has discretionary power in equity suits to stay or dismiss proceedings in deference to parallel state court actions in which the matter in controversy may be fully litigated. Magnolia Marine Transp. Co. v. Laplace Towing Corp., 964 F.2d 1571, 1581 (5th Cir. 1992); PPG Indus., Inc. v. Continental Oil Co., 478 F.2d 674, 679 (5th Cir. 1973). The Fifth Circuit has stated that it is ordinarily uneconomical as well as vexatious for a federal court to proceed with a declaratory judgment action when there is another suit pending in state court presenting the same issues, between the same parties, and in which the issues are not governed

by federal law. PPG Indus., 964 F.2d at 679-680 (citing Brillhart v. Excess Ins. Co., 316 U.S. 491, 86 L. Ed. 1620 (1942)). In determining whether or not to proceed, the district court should consider whether the state court action provides an adequate vehicle for adjudicating the claims of the parties and whether the federal action is more than mere duplication of effort. Magnolia Marine Transp., 964 F.2d at 1581; PPG Indus., 478 F.2d at 682.

In the present action, the court finds that the declaratory judgment suit currently pending in the Circuit Court of DeSoto County provides sufficient opportunity for the parties to present their claims on the issue of policy coverage. Since proceeding with both suits would be an inefficient use of judicial resources, and since the issue of coverage is one governed purely by state law, the court finds that it should exercise its discretion to defer to the pending state court action. This court would not have acted on the petition filed by State Farm if it had known of the pending state court action. Therefore, in accordance with the principles of the Younger abstention doctrine, and the Fifth Circuit precedent set forth in Magnolia Marine Transport and PPG Industries, the court finds that the default judgment should be set aside and this action dismissed in favor of the pending state court proceedings.

#### **CONCLUSION**

For the foregoing reasons, the court finds that the movants' motions to intervene and to set aside default should be granted, and this cause dismissed without prejudice.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of April, 1996.

---

NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE